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OFFICE OF PETITIONS

In re Application of	:	
Brian Leonard Tafel	:	DECISION ON PETITION
Application No. 10/662,686	:	AND
Filed: 15 September, 2003	:	NOTICE OF ABANDONMENT
For: SPLICING VEHICLE	:	

This is a decision on the petition filed on 8 February, 2006, which is treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

The application is **abandoned**.

On 15 September, 2003, the application was filed.

A review of the record reveals that on 25 January, 2005, a non-final Office action was mailed, setting a three (3) month shortened statutory period for reply.

On 6 May, 2005, petitioner filed a paper as an amendment in response to the Office action mailed on 25 January, 2005, but did not file an extension of time.

On 28 June, 2005, petitioner filed a one (1) month extension of time.

On 29 July, 2005, a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed, setting forth a one (1) month shortened period for reply.

On 8 February, 2006, the present petition was filed, accompanied by an Express Mail receipt. Petitioner asserts that his reply to

the Notice mailed on 29 July, 2005, was timely filed by Express Mail on 26 August, 2005.

37 CFR 1.135 states, in pertinent part:

- (a) If an applicant of a patent application fails to reply within the time period provided under 37 CFR § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
- (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require.

37 CFR 1.136(a)(2), states, in pertinent part:

The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available.

A review of the record reveals that a timely and proper reply to the Office action mailed on 25 January, 2005, was never filed. Although petitioner attempted to file an amendment on 6 May, 2005, an extension of time was required but was not filed. As such, the amendment was not a complete reply. Petitioner filed a one (1) month extension of time on 6 May, 2005. On 6 May, 2005, however, a two (2) month extension was required to make the reply timely. As such, a complete and timely reply to the 25 January, 2005, Office action was never filed, and the application became abandoned as, as a matter of law, on midnight on 28 May, 2005.¹

As the application became abandoned on 28 May, 2005, the Notice mailed on 29 July, 2005, is of no force or effect.

¹ See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964)

Petitioner may wish to consider filing a petition under 37 CFR 1.137(b), which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after 8 June, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioners' convenience. A copy of the fee schedule is also enclosed.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision.

The format and wording of the petition, are that of an inexperienced applicant. In further prosecution, the services of a registered attorney or agent are recommended.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571)273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions

Encl: PTO/SB/64
Fee Schedule